

CBIA Social Media Update

AB 1844 now known as California Labor Code 980

California passed a new law taking effect January 1, 2013 that prohibits private employers from “requiring or requesting” employees and applicants to provide their passwords to social media accounts. This law **does not** apply to public employers. As it stands today in January 2013, there is no social media law on the books that prohibits a public employer from asking an applicant to open and peruse the applicants social media sites. (The only exception to that is, if your organization has a policy in place prohibiting cyber vetting of the applicants social media sites).

Update on AB 25

AB 25 is a bill authored by Assembly Member Campos’ office attempting to amend Labor Code 980 by adding “public employers” to the law. The CBIA Board are working closely with POST in a united front to oppose the amendment. We have also requested that should Assembly Member Campos amend Labor Code 980 to include “public employers,” that there be an exemption regarding all public safety applicants and employees.

As of mid-January 2013, the bill stalled with no further action to date. August 21, 2014 AB25 was amended. The bill, if passed, will become 980.1 and as of today September 25, 2014 reads as follows:

SEC. 2.

Section 980.1 is added to the Labor Code, to read:

980.1.

(a) The Legislature, in enacting this section, finds and declares all of the following:

(1) Sworn peace officers occupy a unique position in society as protectors of public trust and guardians of our safety.

(2) These positions can result in the officers exercising their lawful powers of detainment, arrest, custody and, if necessary, force, up to and including the use of deadly force.

(3) Given these powers, extraordinary diligence must be exercised in screening new hire applicants and lateral transfer applicants for sworn peace officer positions to ensure that they meet the highest possible standards, including viewing the applicants’ social media accounts.

(b) Notwithstanding Section 980, a law enforcement agency may access the social media accounts of the new hire applicant or lateral transfer applicant during an interview or background investigation of that new hire applicant or lateral transfer applicant for a position as a sworn peace officer if all of the following conditions are met:

(1) The law enforcement agency has adopted and complied with a written policy, consistent with this chapter, that controls the manner in which it obtains social media information from new and lateral transfer hires.

(2) The law enforcement agency provides prior notice to the new hire applicant or lateral transfer applicant regarding the investigation of his or her social media accounts and the reasons therefor, including the applicant's rights as set forth in this section, and secures the prior written consent of the applicant.

(3) The law enforcement agency shall not ask the new hire applicant or lateral transfer applicant to disclose the password to his or her social networking site or to retain the password if it is disclosed.

(4) The law enforcement agency may only request once during the background process that the new hire applicant or lateral transfer applicant access his or her social media accounts in the law enforcement agency's presence. Nothing in this section shall allow the law enforcement agency any additional access to the applicant's social media information or access to an applicant's email, instant messaging, text messaging, or other communications transmitted bidirectionally between two or more parties that are intended to be private conversation, or to gain further access to an applicant's account. Nothing in this section shall allow the law enforcement agency to utilize an applicant's social media pages to view third-party personal information posted on social media accounts that belong to persons other than the applicant. Nothing in this section shall allow the law enforcement agency to utilize social media information in connection with internal promotions of sworn peace officers.

(5) The social networking sites shall be accessed and viewed only in the presence of the new hire applicant or lateral transfer applicant, who shall be permitted to comment or explain the content or context of any part of his or her social networking account.

(6) The law enforcement agency shall not view, access, or record information from emails, text messages, instant messages, or other private electronic communications.

(7) A law enforcement agency accessing the new hire applicant's or lateral transfer applicant's information shall not access, retain, or act upon information posted by a third party.

(8) For purposes of this section, "new hire applicant" means any person who has been admitted for training as a sworn peace officer but has not yet received a basic POST or CPOST certificate, pursuant to a program described in Section 13510.1 or 13601 of the Penal Code, or who has received a basic POST or CPOST certificate but has never been hired by a law enforcement agency.

(9) For purposes of this section, "lateral transfer applicant" means any person who has been hired as a sworn peace officer by a law enforcement agency other than the one the applicant is applying to.

(c) Information gathered or viewed, intentionally or unintentionally, about a new hire applicant or third party, by a law enforcement agency or its employee, agent, or assign, shall only be used for the purpose of screening potential new hire applicants and lateral transfer applicants, pursuant to this section. In no event shall that information be used as a basis for any action against a new hire applicant or third party, including, but not limited to, administrative, civil, or criminal action.

(d) A lateral transfer applicant shall be entitled to the same remedies available to a public safety officer under subdivision (e) of Section 3309.5 of the Government Code for any violation of this section by a law enforcement agency, its employee, agent, or assign.

~~SEC. 2.~~SEC. 3.

Because of the crucial privacy rights at issue and the growing abuse of those rights, the Legislature finds and declares that this act addresses a matter of statewide interest and applies to public employers generally, including, but not limited to, charter cities and counties.

I will continue to follow this bill. Should you have any questions or need clarification please don't hesitate to contact me.

Tracy Elwood Veraldi

CBIA/President

Tracy.veraldi@lacity.org

tracyelwood@yahoo.com

714-240-3519 (Cell)

213/473-9432 (Work/Desk)